

## **CAPITAL PROJECTS ADVISORY REVIEW BOARD**

**304 15th Avenue SW  
John A. Cherberg Building  
Conference Rooms A, B and C  
Olympia, Washington  
November 12, 2009  
9:00 AM**

### **Draft Minutes**

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#### **MEMBERS PRESENT**

Daniel Absher	General Contractors
Vince Campanella	General Contractors
Norman Strong	Architects
Damon Smith	Engineers
Ed Kommers (Vice Chair)	Specialty Contractors
David D. Johnson	Construction Trades Labor
Mark Riker	Construction Trades Labor
Cynthia Cooper	OMWBE
John Ahlers	Private Industry
Olivia Yang	Higher Education
John Lynch	GA
Larry Byers	Insurance/Surety Industry
Robert Maruska	Ports
Rep. Kathy Haigh	House (D)

#### **REPRESENTING**

#### **MEMBERS ABSENT**

Rep. Bruce Dammeier	House (R)
Senator Rodney Tom	Senate (D)
Senator Dale Brandland	Senate (R)
Rocky Sharp	Specialty Contractors
Christopher Hirst	Private Industry
Rodney Eng	Cities
Gary Rowe	Counties
Vacant	Public Hospital Districts
Dan Vaught	School Districts

#### **STAFF & GUESTS**

Nancy Deakins, GA  
Searetha Kelly, GA  
Cheri Lindgren, Puget Sound Meeting Services  
Jeanne Rynne, OSPI  
Van Collins, AGC  
Terry Tilton, WSBCTC  
Paul Galeno, King County  
Penny Koal, GA/PRC  
Larry Stevens, MCA, NECA  
Jessica Fortescue, AWWA

Rex DeMartin, The Gordian Group  
Robyn Hofstad, GA  
Dick Lutz, Centennial Construction  
Jim Borrow, KCDA  
Aran Buchan, ABC  
Stan Bowman, AIA/WA  
Cathy McKay, BCRA  
Louis Patin, The Gordian Group  
Ginger Eagle, WA Public Ports Association  
Lisa Taylor, King County Wastewater

#### **Welcome & Introductions**

Chair Robert Maruska called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:05 a.m. Everyone present provided self-introductions. A meeting quorum was attained.

#### **Approve Agenda**

A discussion on Mechanical Contractor/Construction Manager (MC/CM) and Electrical Contractor (EC/CM) was added to the agenda under priorities for legislative action.

**Dave Johnson moved, seconded by Cynthia Cooper, to approve the agenda as modified. Motion carried.**

*Mark Riker arrived at the meeting.*

**Approve September 10, 2009 Meeting Minutes**

The following changes were requested to the September 10, 2009 minutes:

- Revise the next to the last sentence within the second paragraph on page 4 to read in part, “According to KCDA, they followed all JOC RFP procedures...”
- Replace “regards” with “concerns” within the last line of the eighth paragraph on page 5.

**Dave Johnson moved, seconded by Daniel Absher, to approve the September 10, 2009 meeting minutes as amended. Motion carried.**

**Public Comments**

There were no public comments.

**Report from Project Review Committee**

Penny Koal, Vice Chair, Project Review Committee (PRC), reported on September 24, 2009, a panel of the PRC was convened to consider a project application by Sound Transit for the General Contractor/Construction Manager (GC/CM) process for its light rail station project located at the main entrance to Husky Stadium at the University of Washington. The PRC approved the project application. Ms. Koal reviewed major parameters of the project including budget and milestones. No applications were submitted for the October meeting. A panel will convene on December 3 to consider a project application for the GC/CM process by Spokane Public Schools for improvements to Ferris High School. She provided additional information concerning renovation components.

**Membership for CPARB and PRC**

Nancy Deakins advised that applications for the specialty contractor’s position replacing Rocky Sharp on CPARB were filed with the Governor’s Office. The Association of Washington Public Hospital Districts (AWPHD) is working to identify a candidate for the vacancy.

Eric Smith, Rick Benner, Jonathan Hartung, Peg Staeheli, Tom Balbo, and Gary Baldasari have requested reappointment to the PRC. Christy Trautman, representing owners (counties), is not seeking reappointment. Those three-year terms expire on January 1, 2010. No applications were received for the vacant counties, ports, or construction manager positions.

Chair Maruska said he’ll follow up on potential candidates to fill the ports position at the December 10 meeting.

Ms. Deakins reported candidates interested in the design industry/architects position currently filled by Mr. Hartung include Jeff Brown, Bruce McKean, and Arthur Nording.

*Representative Haigh arrived at the meeting.*

Candidates interested in the general contractor position currently held by Mr. Balbo include Rick Philipovich, Mohammed Luqman, and Robert Askins. Joseph Bettridge submitted a letter of interest to the Governor’s Office for the specialty/subcontractor position. Currently, there is no vacancy or expiring terms.

Members discussed the level of participation on the PRC by members whose terms are expiring and their respective length of service. Mr. Hartung is actively involved. His firm works on public projects and he exercises good judgment. All the candidates are competent and well qualified. Members supported current members serving as they are actively involved and have done a good job.

Ms. Deakins noted that there are no longer any members from eastern Washington represented on the PRC.

Norman Strong reported he's worked with Mr. Philipovich, who is very knowledgeable about GC/CM and alternative delivery methods.

John Lynch said he's worked with Mr. Balbo, who's also knowledgeable and experienced on the GC/CM process.

**Ed Kommers moved, seconded by Dave Johnson, to reappointment Eric Smith, Rick Benner, Jonathan Hartung, Peg Staeheli, Tom Balbo, and Gary Baldasari to the PRC. Motion carried.**

Members discussed cultivating the list and notifying other interested applicants about the reappointments. The Board can retain applications for consideration in the future.

Olivia Yang referred to the goal of retaining parity between private and public owners.

#### **Task Force Status Reports**

##### ***Developing Guidelines for DBOM and PRC - Olivia Yang***

Ms. Yang provided a historical perspective on developing guidelines for Design Build Operate and Maintain (DBOM). She referred to a comment received previously on PRC's criteria for approval of an agency to use DBOM and suggested adding a question to the second page stating, "How does the agency intend to handle bonding?" Another comment indicated that requiring agencies to be certified in Design Build (DB) excludes cities from using DBOM for treatment plants. Utility infrastructure DBOMs are not included within the proposal.

Ms. Yang referred to criteria the PRC should consider in approving the agency for one of two demonstration projects allowed under current legislation. Based on information and answers provided by an agency, the PRC would have what's needed to evaluate whether an agency can utilize the DBOM procurement model. DBOM goes beyond the standard model of DB in requiring an entity to operate and maintain the facility for a number of years, which is typically 20 to 30 years at the proposed cost and fee schedule. It's also recommended that the PRC adopt the concept of including a minimum of two DBOM experts on a review panel. The experts can provide technical guidance and advise the PRC in its deliberations. She recommended against asking too much of an agency because many agencies are reluctant to invest in work to obtain detailed answers on issues only to discover that they are not allowed to use DBOM. She suggested the PRC acknowledge that balance and evaluate the answers and applications accordingly.

Mr. Kommers added that the Board is asked to approve the guidelines as required duties of the PRC.

Ms. Deakins pointed out that the draft guidelines were distributed to members and stakeholders for review and comment.

Ms. Koal recommended that staff should brief the PRC on the guidelines at a future meeting.

Discussion ensued on whether the task force evaluated alternatives to bonding. Mr. Kommers advised that the issue of investigating bonding was not within the scope of the task force. An entity can propose an alternative to the PRC.

Larry Byers asked how DBOM projects are funded. Ms. Yang referred to a project where capital costs were initially funded. The tenants of the facility pursue grants for providing a revenue stream to pay the operations and maintenance elements. That procurement model is proposed for non-utility infrastructure DBOM, such as a building.

**John Ahlers moved, seconded by Cynthia Cooper, to approve the PRC guidelines to evaluate DBOM projects.**

Mr. Johnson said he understands that prevailing wages apply to DBOM contracts based on 39.12. Ms. Yang confirmed that is the case.

Mr. Kommers said the intent of the guideline is for an option under the DB statute in 39.10. It's not intended to change other rules that apply. He volunteered to brief the PRC on the guidelines.

**Motion carried unanimously.**

***Integrated Project Delivery/Best Value – Norman Strong and John Lynch***

Mr. Strong reported the Board established the Integrated Project Delivery (IPD) and Best Value Contracting/Competitive Negotiation (BV) Task Force last May. A roster of task force participants was provided. The task force met several times and discussed challenges facing public owners and stakeholders when considering more efficient, less expensive project delivery methods, which included:

- Need for early subcontractor input.
- Early integration of team members and information
- Scale and complexity of a project needs to match delivery methods.
- Interest in qualification based selection by public owners.
- A high quality process and outcome is desired.

A white paper describing approaches which may be applicable to public projects in approved project delivery methods of Design Bid Build (DBB), DB, and GC/CM was provided to members.

Evaluating Job Order Contracting (JOC) and small works roster procurement methods was beyond the role of the task force. The task force's charter was looking at different ways of making public works laws more responsible to current needs and pressures of public owners in two specific areas including the use of IPD methods and BV selection and management methods. Mr. Strong emphasized that the document is not a best practices paper. The white paper developed by the task force is intended to provide information to public owners on alternative approaches that might be possible. Public owners are strongly encouraged to carefully and realistically evaluate risks and benefits inherent in those approaches

The Board was asked to provide feedback. The task force meets on November 19. The goal is for the Board to discuss and endorse the white paper at its December 10 meeting. Mr. Strong suggested the task force should continue discussing IPD and other aspects that might influence legislative change or new legislation for the 2011 session.

John Lynch said an assignment is identifying gaps, which includes BV. A subgroup of the task force is evaluating the potential to draft a bill for the 2011 legislative session allowing BV procurement under 39.10. The white paper identifies approaches that could be pursued under current statutes.

Members discussed how the white paper could be used. Mr. Strong advised that the intent is focused on the Revised Code of Washington (RCW). However, public owners should be knowledgeable about local codes and practices in addition to the RCWs. The white paper includes approaches that might be applicable to public projects. The paper is an interpretation of what could occur within public works statutes and it provides a snapshot of what private industry is doing in other states. Not all challenges can be addressed in current statute including BV.

Mr. Absher said he's supportive of the white paper in general.

Representative Haigh said the white paper is a good start and a valuable document written in understandable language.

Mr. Strong asked members to forward comments by Monday, November 16, prior to the task force's next meeting.

#### **Bidder Responsibility & Eligibility**

Mr. Kommers advised that there is nothing new to report regarding bidder responsibility and eligibility. The intent was to notify the Board about concerns. He previously proposed convening a task force to explore issues and develop supplemental information for public owners.

Mr. Absher reported the IPD/BV task force discussed an evaluation system of contractors, which some public agencies are currently doing. Establishing a standardized evaluation methodology is an issue the CPARB may want to address together with bidder responsibility and eligibility.

#### **Report on Public Housing Authorities**

Chair Maruska reported for the December 10 meeting, the Washington Public Housing Authorities (PHAs) is asking the Board to discuss the agency's proposed approach to restore and broaden the exemption from Board project review so that 39.10 does not apply to them.

Representative Haigh reported on a PHA meeting held several weeks ago. An underlying issue is the funding source of federal dollars for projects. It's probably a good idea to exempt PHAs from state procurement rules if the Board so chooses. It's important that the CPARB engage in a full discussion concerning the matter with the housing authority at the December meeting.

Chair Maruska advised that other public owners also receive federal funding. A holistic approach to address the issue is appropriate.

Discussion ensued on reporting requirements, accountability, and transparency by agencies, such as the Department of Energy for administering American Recovery & Reinvestment Act stimulus money at both federal and state levels.

Chair Maruska recessed the meeting from 10:29 a.m. to 10:54 a.m. for a break.

*John Lynch left the meeting.*

**CPARB Priorities for Legislative Action**

Mr. Kommers reviewed changes approved by the Board in May 2009 regarding, "Design Build Definition for Modular Amendment to RCW 39.10.300(3)" as follows: "The design-build procedure also may be used for the construction or erection of portable facilities as defined in WAC 392-343-018, pre-engineered metal buildings, or not more than five prefabricated modular buildings per installation site, regardless of cost and is not subject to approval by the committee." The amendment could be included with CPARB sponsored legislation.

Chair Maruska reviewed a draft JOC contract amendment to RCW 39.10.430(1) stating, "Job order contracts shall be awarded through a competitive process using public requests for proposals. No more than one job order contract shall be awarded for each public request for proposal." The Board did not take action to approve the amendment, which could be included in a combined bill as well.

Ms. Deakins reported Rodney Eng with the City of Seattle drafted and distributed the proposed amendment, which has not been discussed with Marsha Reilly, House Committee staff. Ms. Reilly expressed a concern that one contract for each public request for proposal (RFP) could preclude a public body from soliciting for more than one JOC if authorized to do so. For example, GA is authorized to advertise up to four JOCs with a single solicitation. Ms. Reilly's language proposal is that a public body may not award more than one JOC in effect at any one time to the same contractor, which is very different from the intent of the amendment.

Ms. Yang commented that Ms. Reilly raises a good point that could result in an unintended outcome.

Discussion ensued on the intent of the amendment, which is not bundling JOCs. Ms. Deakins clarified that GA intends to solicit individually for each of its four JOCs.

Ms. Yang said public owners authorized for two JOCs might want efficiency and utilize a single solicitation saving the organization and bidders time through a second and later solicitation.

**Dick Lutz, Centennial Contractors**, reported that the existing statute provides a 60 to 90-day window for an owner to let the second contract for the same RFP\*. (*\*Subsequent to the meeting it was determined that the present RCW 39.10 is silent on the issue of awarding two JOC contracts for a single solicitation.*)

Chair Maruska asked Mr. Johnson and Ms. Yang to work with Mr. Eng to revise the draft contract amendment for JOC, as the proposal shouldn't conflict with the current statute.

Chair Maruska referred to a revised definition for public body. A discussion with the PHA at the December meeting could inform the proposed amendment. Feedback from Ms. Reilly on the definition as proposed may unnecessarily narrow the definition of all public bodies currently existing in statute.

Ms. Deakins advised that Ms. Reilly conveyed that unless there's a problem that needs to be addressed, she recommends the Board not change the definition.

Members discussed the definition of special purpose districts and that perhaps a broader definition for public body is preferable.

Mr. Johnson commented that unless specifically listed as a public body, the PHA believes it's exempt from the Board's review and that 39.10 is not applicable to the organization. The proposal is intended to address that specific issue.

Ms. Deakins advised that Mr. Eng drafted the proposed change, which hasn't been approved by the Board.

Additional discussion ensued on the DB definition for modular language and whether there's a distinction between portable facilities and prefabricated modular buildings. Mr. Kommers explained that the initial proposal contained a square footage maximum, which conflicted with a statute pertaining to school districts. The task force went back to the definition for portable facilities. There was no statutory definition for modular buildings. The goal is clarifying the exemption for the DB procedure. An owner could make application to the PRC to construct more than five prefabricated modular buildings on a site. The definition does not limit the number of portable facilities or pre-engineered metal buildings.

Mr. Johnson reported on other discussions involving modular buildings, the definition of modular buildings, and how that applies in the public works arena.

Mr. Kommers acknowledged concerns about procurement in other areas as well, which is not addressed with the proposal.

Mr. Absher distributed preliminary draft legislation for MC/CM and EC/CM alternate contract award process. The concept is allowing a GC/CM to select mechanical and electrical contractors through a process similar to the selection of the GC/CM. The University of Washington (UW) approached him and others on what could be done quickly to afford the agency more flexibility. A wide range of ideas was discussed. He suggested the Board should consider the proposal as part of an amendment package to the Legislature in 2010. An ad hoc group of Mr. Kommers, Larry Stevens, Ms. Yang, and himself met and developed the draft language. A copy was forwarded to Mr. Eng for comments. The ad hoc group will meet on November 19 following the IPD/BV task force meeting. He asked members to email comments to him by November 18. Boardmembers are welcome to attend the ad hoc meeting.

Chair Maruska encouraged the CPARB to take action and establish a task force on the topic.

Ms. Yang expressed appreciation to Mr. Absher for addressing the issue with the Board. A condition in the current law is that the owner must develop the mechanical/electrical scope to an extent to obtain a lump sum price. The proposal could allow public owners to address that problem. She acknowledged there are substantive concerns; however, she remains hopeful that members can address and resolve those concerns. Ms. Yang said she supports the CPARB sponsoring the legislation for the 2010 session. A positive message can be gained by others working collaboratively and proactively with the Board to do good things to benefit owners.

**Daniel Absher moved, seconded by Olivia Yang, to establish a task force to consider MC/CM and EC/CM legislation. Motion carried.**

Mr. Absher volunteered to lead the task force.

Discussion ensued on the issue to establish a procurement process for mechanical and electrical. Mr. Kommers added that the document describes a concept and does not represent final language.

Members and others volunteering to serve on the task force included Olivia Yang, Ed Kommers, Vince Campanella, John Ahlers, Mark Riker, Dave Johnson, Larry Stevens, and Van Collins. Mr. Absher said he'll invite Mr. Eng to participate on the task force. The goal is presenting draft legislation for the Board's consideration on December 10.

### **2010 Work Plan**

Mr. Strong advised that draft legislation for IPD/BV will not occur until the 2011 legislative session.

Chair Maruska asked that the IPD/BV Task Force develop priorities for 2011 and report to the Board at a future meeting.

Chair Maruska reported he and other members received a letter from The Gordian Group in South Carolina requesting a discussion with the Board regarding JOC.

**Louis Patin, The Gordian Group**, reported the organization supports the JOC premise. JOC is an efficient and effective system for public agencies. Mr. Patin volunteered to serve on the task force and/or provide additional information. The agency is also experienced in developing statute language. The Gordian Group is a procurement consulting firm representing 200 clients. The organization has won multiple awards for procurement procedures. The Gordian Group does not contract or build and assists public agencies with procuring and implementing JOCs.

Chair Maruska reported the CPARB will meet on the following dates in 2010: February 11, May 13, September 9, November 11, and December 9.

Mr. Kommers suggested not changing the 2010 meeting schedule. The CPARB could consider establishing additional task forces at the February 2010 meeting.

Discussion ensued on the process and establishing milestones for CPARB sponsored legislation.

Ms. Yang commented that the Board could also develop guidelines and prioritize items requiring legislation changes and those that don't, which could relieve the burden on the Legislature.

Chair Maruska said it's important that the Board document all work to illustrate its value and to inform reporting to the Joint Legislative Audit and Review Committee (JLARC).

Ms. Yang said the Board tends to react to a problem. She referred to the CPARB and the PRC assuming a more proactive role and forming a public owner help desk. The help desk could be a resource available to owners. Best practices could be more institutionalized rather than legislative in nature. The result could be developing a simpler set of laws that are easily adopted and understood.

Chair Maruska suggested the Board discuss and set the agenda for the 2011 session.

Mr. Kommers reported the Associated General Contractors (AGC) Education Foundation is conducting a two-day GC/CM workshop on January 28 and 29, 2010.

### **Staff Updates**

Ms. Deakins reported the annual JOC public body survey was distributed to public owners on October 1. Owners have until December 1 to complete and return the survey.

GA is hiring a consultant to evaluate GC/CM, DB, and DBB data, identify gaps, follow up with public owners to ensure complete data, and complete data collection analysis for the Legislature next year.

Ms. Deakins reported that completed owner surveys will be forwarded to OWMBE for verification of certified firms.



Ms. Deakins provided an update on the CPARB and PRC 2009-2011 budget and additional information on indirect charges not reflected in prior reports. GA is using a rate model allocation system of charging all its programs with costs charged by other agencies (revolving funds) as well as allocating all internal (indirect) costs totaling \$6,831 each fiscal year. Interagency revolving funds pay for statewide financial and information systems, OWMBE, and the State Auditor. Indirect charges are for GA Facilities Division's financial and administration costs allocated based on transactions and total budget. The indirect charges consume a majority of the contingency previously set aside to pay for extra Board meetings.

Ms. Deakins reported she was asked to provide the Office of Financial Management (OFM) with an explanation for implementing an additional 2% budget reduction, which comes from the data analysis expenditure. OFM was also provided with information on the decision that the CPARB and the PRC will meet less frequently with reductions in beverage service and waiving of some member travel.

Chair Maruska pointed out that the updated budget report attempts to capture volunteer hours for the CPARB, task force, and PRC meetings.

Mr. Strong said the number of hours donated for task force meetings is likely too low. He suggested assigning an hourly rate because the state is receiving real money as a benefit from volunteer efforts. Mr. Absher added that members could do a better job in documenting the number of hours spent attending meetings.

Mr. Strong suggested each task force chair or co-chair forward additional information on attendee hours to Ms. Deakins. Chair Maruska said the information illustrates the commitment the industry puts forward on the value of CPARB.

Discussion ensued on whether OFM or another agency has an established per diem rate for volunteer hours.

Ms. Deakins reported the UW Husky Stadium Method Evaluation Report was forwarded to legislators and some committees and is posted on CPARB's website.

#### **Set Next Meeting Agenda**

- IPD/BV white paper endorsement discussion
- Presentation by the PHA
- MC/CM and EC/CM task force report and action
- Discuss developing a bill package for the 2010 session with Ms. Reilly

#### **Adjournment**

With there being no further business, Chair Maruska adjourned the meeting at 12:12 p.m.

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Robert Maruska, CPARB Chair

Prepared by Cheri Lindgren, Recording Secretary  
Puget Sound Meeting Services